IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

WEDNESDAY, THE 23RD MAY 2007 / 2ND JYAISHTA 1929

WA.No. 1155 of 2007()

AGAINST THE JUDGEMENT IN WPC.12529/2007
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APPELLANT: PETITIONER

M.J.JOSE, MARATTUKULAM, PUZHAVATHU, CHANGANACHERRY, PRESENTLY RESIDING AT EXECUTIVE SUIT, E-10, SHARJAH UAE, REP. BY HIS POWER OF ATTORNEY HOLDER MR. P.A.THOMAS, RESIDING AT PALLATHU HOUSE, KOTTAMURY,THRIKKODITHANAM VILLAGE, CHANGANACHERRY.

BY ADV. SRI.M.PATHROSE MATTHAI (SR.)
SRI.RAMESH CHERIAN JOHN

RESPONDENTS: RESPONDENTS
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1. THE COMMERCIAL TAX OFFICER, THIRUVALLA.

2. MR. K.A.FRANCIS, GLORIA GLASS INDUSTRIES, PAMALA, ANJILITHANAM.

R1 BY SPL.GOVERNMENT PLEADER (TAXES) MR.V.V.ASHOKAN

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 23/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN, J.

W.A.No. 1155 of 2007

Dated, this the 23rd day of May, 2007

JUDGMENT

H.L.Dattu, C.J.

This appeal arises out of an order passed by the learned Single Judge in W.P.(C) No.12529 of 2007 dated 11th April, 2007. By the impugned order the learned Single Judge has declined to entertain the writ petition solely on the ground that if for any reason the petitioner is aggrieved by the orders of assessment passed by the assessing authority, he can question the same before the appellate forum.

2. The learned Senior Counsel appearing for the appellant would submit that the learned Single judge was not justified in not entertaining the writ petition on the ground that the petitioner has an alternative effective and efficacious remedy provided under the Act. Secondly, the learned counsel would submit that this Court while disposing of W.A.No.2142 of 2006 dated 20th November, 2006 had issued a specific direction to the assessing authority to redo the matter in accordance with law after affording an opportunity of hearing to the petitioner and since that direction had not been obeyed by the assessing

authority, this Court should entertain this writ appeal.

3. None of the contentions canvassed by the learned counsel for the appellant, in our opinion, would impress us. The statute provides an alternative remedy, if for any reason, an assessee is aggrieved by the order of assessment passed. When the remedy provided under the Act is not only effective but also an efficacious remedy, without availing that remedy the petitioner should not have approached this Court, inter alia questioning the correctness or otherwise of the orders passed by the assessing authority under the provisions of the Kerala General Sales Tax Act.

4. Governing the aforesaid aspect of the matter the learned Single Judge declined to entertain the writ petition and permitted the assessee to file appeal, if he so desires, against the orders of assessment passed by the assessing authority.

5. The second contention canvassed by the learned Senior Counsel is that the assessing authority without faithfully complying with the orders and directions issued by this Court has proceeded to pass the assessment orders. In our opinion, even this submission can be canvassed by the assessee before the first appellate authority. If for any reason, the first appellate

authority comes to the conclusion that the orders of assessment passed by the assessing authority are contrary to the directions issued by this Court, the said Authority can definitely interfere with the said order and set aside the same.

6. In view of the above, we are of the opinion that the learned Single Judge has not committed any error whatsoever while rejecting the writ petition filed by the assessee.

Liberty is reserved to the assessee to file appeals against the orders of assessment for the years 1999-2000, 2000-01, 2001-02 and 2002-03 within a month's time from today. If such appeals are filed within the time granted by this Court, the appellate authority shall decide the appeals on merits without reference to the period of limitation. All the contentions of both parties are left open. Ordered accordingly.

H.L.DATTU, CHIEF JUSTICE

K.T.SANKARAN, JUDGE

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